

SUBPART 246.7—WARRANTIES

246.701 Definitions.

“Acceptance,” as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246-18, Warranty of Supplies of a Complex Nature; FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246-20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

“Defect,” as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(c) Departments and agencies shall establish procedures to track and accumulate data on warranty costs.

246.703 Criteria for use of warranties.

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

- (1) Commercial items (see FAR 46.709);
- (2) Technical data, unless the warranty provides for extended liability (see 246.708);
- (3) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202-4); or
- (4) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

246.705 Limitations.

(a) Warranties in the clause at 252.246-7001, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

- (1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and
- (2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7013, Rights in Technical Data and Computer Software, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at—

- (i) FAR 52.246-3, Inspection of Supplies—Cost-Reimbursement;
 - (ii) FAR 52.246-6, Inspection—Time-and-Material and Labor-Hour;
 - (iii) FAR 52.246-8, Inspection of Research and Development—Cost-Reimbursement; and
 - (iv) FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.
- (2) Use the clause at 252.246-7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.
- (3) Use the clause at 252.246-7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.
- (4) Use the clause at 252.246-7002, Warranty of Construction (Germany), in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.